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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

ORIGINAL COPY

JOHN YOUNG,

Petitioner,

v.

WALTER D. ZANT,
WARDEN,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF BUTTS COUNTY, GEORGIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

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10

QUESTIONS PRESENTED

1.

Did Petitioner receive effective assistance of counsel?

2.

Does Georgia law provide an adequate procedure for the raising, reviewing, and disposition of constitutional issues in habeas corpus?

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PART ONE

STATEMENT OF THE CASE

Petitioner, John Young, was indicted by a Bibb County, Georgia, grand jury for the murder of three elderly Macon, Georgia, residents in December 1974. The facts adduced at trial showed, quite simply, that John Young went on a rampage. The Supreme Court of Georgia succinctly recounted the facts as follows:

> On the night of December 7, 1974, six elderly persons were attacked, severely beaten, kicked, and stomped in their homes in the City of Macon, Bibb County, Georgia. All lived in the same neighborhood. Three of those people pieced together a description of their assailant. The other three victims died as a result of attacks upon them.
>
> The appellant was connected to the crimes by watches and jewelry taken during the commission of the crimes, a fingerprint, and statements to his friends that he did it. When asked if he was the one who had jumped on those people, he replied: "Yeah, man and I'm going to get me some more." When asked if they were white or black, he responded: "White." When asked: "Why, John?"

> He replied: "I don't know. The only thing that I am sorry is that they caught me before I got through."

Young v. State, 239 Ga. 53, 54, 236 S.E.2d 1 (1977). The facts of this case have been before this Court on an earlier occasion in Young v. Georgia, Case No. 77-5620, wherein this Court denied the petition for a writ of certiorari to the Supreme Court of Georgia following that court's affirmance of the convictions and sentences.

Thereafter, Young filed his habeas corpus petition in the Superior Court of Butts County, Georgia, raising myriad issues, most of which were unsupported by evidence and deemed abandoned. Relief was denied and Petitioner filed an application for a certificate of probable cause to review that denial with the Supreme Court of Georgia. That application was also denied. From the adverse decisions of the courts of the State of Georgia, Petitioner files his petition in this Court. Neither allegation has merit; each will be addressed separately in the remaining portion of this brief.

PART TWO

REASONS FOR NOT GRANTING THE WRIT

I. PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL.

Petitioner first asserts that he received ineffective assistance of counsel. This issue was raised in the state habeas court which properly found the issue had already been raised in and addressed by the Supreme Court of Georgia on Petitioner's direct appeal from his convictions and sentences. The applicable portions of that appellate decision read as follows:

> Appellant's counsel at trial filed innumerable motions and special pleas prior to trial and ably supported them with argument. During the trial, counsel made additional motions, interposed objections, and conducted a thorough and sifting cross examination of the witnesses called by the state. His trial counsel was a member of the Georgia Bar.
>
> In Pitts v. Glass, 231 Ga. 638, 639 (203 SE2d 515) (1974), this court quoted approvingly from MacKenna v. Ellis, 280 F.2d 592, 599 (5th Cir. 1960): "We interpret the right to counsel as the right to effective counsel. We interpret counsel to mean not errorless counsel, and not

> counsel judged ineffective by hindsight but counsel reasonably likely to render and rendering reasonably effective assistance." (Emphasis supplied). Appellant's final enumeration of error is without merit.

Young v. State, 239 Ga. at 60.

At the habeas corpus hearing, Petitioner attempted to show, unsuccessfully, that his trial attorney's conviction on charges of possession of marijuana adversely affected the services rendered. The state habeas court agreed with the decision of the Supreme Court of Georgia, saying:

> This habeas court can reach no different conclusion because of the difficulties Petitioner's trial counsel had with the law at a later time because there has been no showing that the lawyer's drug problems had any effect on the way Petitioner's case was tried. Even if the Court assumes that trial counsel was taking illegal drugs during Petitioner's trial, the result is no different because Petitioner has been unable to show any relationship between his trial and the lawyer's personal problems. The Supreme Court found no Sixth Amendment violation. Nothing has been presented to make that opinion inappropriate.

State habeas order at 5. As indicated by the habeas court, the

evidence which Petitioner presented on this issue was immaterial to whether the attorney had rendered effective assistance of counsel in his case. The record of trial evidences more than competent assistance of counsel, as the Supreme Court of Georgia found.

As previously indicated, state standards and federal standards for effective assistance of counsel are the same. The state courts correctly applied the appropriate standards to the facts of the case, finding effective assistance of counsel to have been rendered. That finding is amply supported and Petitioner's first issue provides no ground for granting the writ.

II. GEORGIA LAW PROVIDES AN ADEQUATE PROCEDURE FOR THE RAISING, REVIEWING AND DISPOSITION OF CONSTITUTIONAL ISSUES IN HABEAS CORPUS.

Petitioner contends in his second allegation that he somehow has been denied various constitutional rights by the denial by the state habeas corpus court of Petitioner's motions for funds for expert assistance. Only if Petitioner has a constitutional right to retry his case, be given a second appeal, and duplicate testimony from witnesses on issues identical to those raised and decided either at trial or on appeal has there been any abridgement of constitutional rights.

This Court has been quick to safeguard those constitutional guarantees to which an indigent defendant in a criminal case is rightly entitled. Indeed, those cases cited by Petitioner in support of his allegation deal primarily with those rights either in the context of a criminal trial or a direct appeal. Petitioner Young was denied none of those rights.

The right now posited by Petitioner is that, because he is indigent, he is entitled to funds on request from a state habeas corpus court even when, as here, the claims he wishes to investigate have already been raised and decided at trial or on direct appeal, or are unsupported to the point of having been abandoned.

In Bounds v. Smith, 430 U.S. 817 (1977), this Court held that "a constitutional right of access to the courts" required "meaningful access" in terms of providing either law libraries or reasonable alternatives "to assist inmates in the preparation and filing of meaningful legal papers." Id. at 821, 827-28.

However, meaningful access to the courts does not mean providing funds for the duplication of evidence at the whim of an indigent defendant. In Ross v. Moffitt, 417 U.S. 600 (1974), this Court required "that indigents have an adequate opportunity to present their claims fairly within the adversary system." Id. at 612. The question involved in Ross v. Moffitt was whether a state was required to provide counsel "for discretionary state appeals and for applications for review in this Court." Id. at 603.

In the present case, the state habeas court correctly concluded that it had "no authority to grant such a Motion and would have no funds to make available if it did." State habeas court's order at 5.

Furthermore, setting aside for the moment the absence of any right to funds for the purposes Petitioner sought them, Petitioner presented no basis for the granting of any funds. In his motion, Petitioner claimed he needed (1) an "investigator . . . to make a full expert investigation of the facts and issues," specifying "the non-disclosure of pertinent information which [has] come to the attention of the Petitioner"; (2) a criminologist "to reconstruct the crime scene from available evidence"; (3) a "death penalty expert" to "offer evidence as to the arbitrary and capricious administration of the death penalty and the irrationality of the justifications for capital punishment"; (4) a psychologist or psychiatrist, because "[t]he issue of Petitioner's sanity has never been adequately explored by the Georgia courts. . ." and "he is genuinely in need of a professional psychological evaluation"; and (5) a "jury panel investigator" because "Petitioner has filed a challenge to his Grand and Traverse Juries," therefore, "jury panel investigators are needed."

Precisely what "pertinent information" has come to his attention was not proffered to the state habeas court. Precisely why a reconstruction of the crime scene was necessary still has not been made clear, particularly when Petitioner admitted to witnesses that he had committed the acts. Does Petitioner intend to show that the six elderly victims were not "severely beaten, kicked, and stomped in their homes"? Young v. State, 239 Ga. at 54. No proffer has been made on what any "death penalty expert" would testify to. As for an examination by psychologists or psychiatrists, contrary to Petitioner's assertions that issue has been more than adequately explored by the courts of the State of Georgia. Upon motion of trial counsel, Young was examined by a psychiatrist, at no expense to him, to determine his sanity at the time he committed the offenses, as well as his sanity at the time of trial and his ability to assist his trial counsel. Petitioner's trial counsel filed a special plea of insanity which was tried not once, but twice. On both occasions, the specially impaneled jury ruled against Petitioner. Finally, Petitioner has given no reason for needing a "jury panel investigator" other than his contention that he "has filed a challenge" to the grand and traverse juries. Even were such funds available, and they are neither available nor required, simply making an allegation surely would be inadequate to require such funds. Furthermore, Young's trial counsel, who he now contends was ineffective, filed a timely challenge to the traverse jury. (R. 14-17). As a result of the challenge, it was determined by the trial court "that the jury list for Bibb County should be recompiled to include other persons not heretofore on the jury list and that this recompiled and reconstituted jury would be the jury placed on the Defendant for the trial for the trial of the general issues of the cases against the Defendant."

(R. 116-17). [1] As to the recompiled traverse jury, the defendant's renewed challenge was overruled. (R. 133-34). As for Petitioner's attempted habeas challenge to the grand jury, that issue was litigated in the trial court, on direct appeal, and this Court has previously denied his petition for a writ of certiorari on that ground. Petitioner is simply attempting to duplicate what has gone on before and is not entitled to do so.

Thus, pretermitting the question of whether Petitioner is entitled to any funds, it is evident that he made no showing of need for funds. Furthermore, some of the experts to which he now claims entitlement were appointed at the time of trial.

As this Court, in a somewhat different context, said in United States v. MacCollom, 426 U.S. 317 (1976), "neither the Equal Protection Clause of the Fourteenth Amendment, nor the counterpart equal protection requirement embodied in the Fifth Amendment, guarantees 'abolute equality or precisely equal advantages.' San Antonio School Dist. v. Rodriguez, 411 U.S. 1, 24, 93 S.Ct. 1278, 1291, 36 L.Ed.2d 16 (1973). In the context of a criminal proceeding they require only 'an adequate opportunity to present [one's] claims fairly. . .' Ross v. Moffitt, 417 U.S. 600, 616, 94 S.Ct. 2437, 2447, 41 L.Ed.2d 341 (1974)." Id. at 324.

That Petitioner is under a sentence of death does not exalt his claim so as to require funds where none are required otherwise,

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[1] It was as a result of the recompiling of the traverse jury that Young was awarded a second trial on his special plea of insanity.

where the issues he seeks to present have been fully developed at trial and considered there and on direct appeal, and where no additional showing or proffer has been made. Finally, the law governing habeas corpus petitions in Georgia provides alternate means of presenting evidence at no expense or at nominal expense. Ga. Code Ann. § 50-127 provides, in part: "The Court may receive proof by depositions, oral testimony, sworn affidavits, or other evidence." Ga. Code Ann. § 50-127(7)(a). Petitioner obviously was aware of these alternative inexpensive means of presenting evidence because he submitted some evidence by way of affidavit.[2/] Petitioner made no showing that he even put forth the effort to avail himself of alternate methods of presenting evidence. Thus, even had he been entitled to present evidence on issues already decided, such as the composition of the grand and traverse jury, psychiatric examination, an investigator to "investigate," a criminologist "to reconstruct the crime scene," and a "death penalty expert" to opine, Petitioner did not take advantage of the alternative means for doing so.

In summary, neither this Court nor the courts of the State of Georgia require the expenditure of funds under the circumstances of this case; if such expenditure were required, Petitioner made no showing of need. Those issues properly presented were fully and fairly addressed and adjudicated by the state habeas court. To the extent Petitioner does not agree, he may make the effort to establish in federal habeas court to the contrary. This ground presents no basis for granting the writ.

[2/] Petitioner submitted his own affidavit.

CONCLUSION

No sufficient reasons having been presented, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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